CASE UPDATE

DISTRICT COURT DISMISSES OBJECTION TO CAR PARKING BY-LAW AT FORT GARDENS

Introduction

1. Management Corporations ("MCSTs") are statutorily empowered to make by-laws for the purpose of controlling and managing the use or enjoyment of the estate.

2. "Parking" is one of the purposes for which MCSTs may make such by-laws. It is typical for MCSTs to make by-laws governing various aspects of parking in an estate, including parking entitlements, charges, prerequisites and application procedures.

3. However, all by-laws made by the MCSTs must not be inconsistent with by-laws "prescribed by regulations", also known as prescribed by-laws.

4. In *Manohar K D Nanwani v The Management Corporation Strata Title Plan No 1884* [2023] SGDC 40, a resident at Fort Gardens applied to Court to challenge the validity of a parking by-law on the basis that it was inconsistent with prescribed by-laws.

5. The District Court held that the parking by-law was not inconsistent with the prescribed by-laws, and though it was not necessary, found also that the parking by-law was reasonable.

6. In dismissing the application, the District Court observed that the resident's only interest had been in using the judicial process to vex and oppress the MCST, and that the application was a quintessential abuse of process from start to finish.

7. The successful Management Corporation was represented by Daniel Chen and Enzel Tan of Lee & Lee.

Brief Facts

8. The Defendant is the Management Corporation Strata Title Plan No. 1884, the management corporation constituted in respect of the development known as Fort Gardens, a residential estate with 69 units. The MCST was constituted on 7 March 1995.

9. The Applicant is a subsidiary proprietor and resident who moved into a unit in the estate in September 2022, having purchased the unit sometime earlier that year.

10. By the time the Applicant moved in, the estate's by-laws on parking had already been in place, and had been applied to all residents, for more than a decade. These by-laws were made in 2011.

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11. One of the estate's parking by-laws stated that vehicles would be issued car park labels (and therefore be allowed to park in the estate) on verification that the 'vehicle log book' bore an address in Fort Garden. The text of the by-law read:

    "*Vehicles belonging to unit owners or tenants must be registered with the Management Corporation. Registered vehicles will be issued carpark labels, subject to verification of the vehicle log book. Tenants must obtain written approval from the landlords when applying for car park labels. Only vehicles whose vehicle registration documents bear the address of Fort Garden shall be eligible for registration and the decision of the Management Corporation to accept or reject such application shall be treated as final and conclusive*".

    ("the Parking By-Law"))

12. According to the MCST, before the Parking By-Law was made (i.e. before 2011), residents would abuse the system by sharing their car park labels with friends and family or non-resident subsidiary proprietors. To address this abuse, the MCST needed to ensure that car park labels were issued to residents and also tied to specific vehicles. This required the MCST to verify that the applicant was a resident and also the owner of the vehicle in question. The vehicle log card, which bears both the name of the owner as well as his registered address, was therefore required as part of the application process.

13. The Applicant applied for a car park label shortly after moving in, submitting a document which he said was a vehicle log card. However, the document did not bear an address in Fort Garden, instead showing his previous address.

14. The Applicant was not issued a car park label, and instead told to produce an updated vehicle log card bearing his Fort Gardens address. However, the Applicant did not do so, and applied to Court for, inter alia:

    a. A declaration that the Parking By-Law was unlawful and invalid; and

    b. An order that the MCST immediately issue him a car park label.

Alleged Inconsistency with Prescribed By-Law

15. The Applicant's primary argument was that the Parking By-Law was unlawful and invalid because it was inconsistent with part of a prescribed by-law. This argument was founded on Section 32(2) of the Building Maintenance and Strata Management Act 2004 ("BMSMA") which states that any by-laws made by a management corporation must not be inconsistent with "the by-laws prescribed by regulations".

16. The Applicant argued that the Parking By-Law was inconsistent with a by-law prescribed by paragraph 2(2) of the 2nd Schedule to the Building Maintenance (Strata Management) Regulations 2005 ("BMSMR"), which states that:

    "*The management corporation shall not unreasonably withhold its approval to the parking or leaving of a motor vehicle or vehicle on the common property*."

17. However, the MCST pointed out that paragraph 2(2) of the 2nd Schedule to the BMSMR did not even apply to Fort Gardens. Having been constituted in 1995, the prescribed by-laws for Fort Gardens were not those in the 2nd Schedule to the BMSMR, but instead those in the repealed Land Titles (Strata) Act (Cap 158,1999 Rev Ed). The prescribed by-laws for Fort Gardens did not include paragraph 2(2) of the 2nd Schedule to the BMSMR.

18. The Applicant accepted that paragraph 2(2) of the 2nd Schedule to the BMSMR did not bind the MCST directly, but argued that it should bind the MCST indirectly. The Applicant argued that on his reading of Section 32(2) of the BMSMA, by-laws made by any management corporation (even one not bound by the by-laws at the 2nd Schedule to the BMSMR) must not be inconsistent with the by-laws at the 2nd Schedule to the BMSMR.

19. The District Court disagreed, finding that the Applicant's interpretation would lead to an illogical result and make no sense. The District Court held that the correct reading of Section 32(2) of the BMSMA was that by-laws made by a management corporation must not be inconsistent with the by-laws prescribed by statute which are applicable to the particular management corporation in question.

20. In sum, the Applicant's argument that the Parking By-Law was unlawful and invalid for being inconsistent with a prescribed by-law failed at the outset because the prescribed by-law in question was not even applicable to Fort Gardens.

Reasonableness of the Parking By-Law

21. Although it was unnecessary to do so, the District Court went on to consider whether the Parking By-Law was unreasonable.

22. The District Court adopted a framework suggested by the MCST for the consideration of the issue, namely (a) whether there is a good reason for the Parking By-Law, and (b) whether the Parking By-Law is onerous.

23. The District Court found on the facts, and with reference to the MCST's stated reasons for the Parking By-Law, that there was a good reason for the Parking By-Law, and that this pointed towards the reasonableness of the Parking By-Law.

24. The District Court found that the Parking By-Law was not onerous, which also pointed to the reasonableness of the Parking By-Law. In this regard:

    a. The District Court noted the MCST's position that that since the Applicant had already updated his address on his NRIC, the address on his vehicle log card would have been automatically updated, and all he needed to do was to retrieve the log card online at the Land Transport Authority ("LTA")'s One Motoring website, via 3 steps set out in the 'FAQs' on the LTA website. The MCST even included those instructions in its evidence to the District Court.

    b. The Applicant claimed that his vehicle log card did not show his Fort Gardens address, and even filed a further affidavit purporting to show that his vehicle log card did not show his Fort Gardens address. This affidavit exhibited a document the Applicant said was retrieved from his Singpass Application, which showed no address and had no field for any address.

c. The District Court found that the document exhibited by the Applicant was not his vehicle log card, that the Applicant had" disingenuously" chose not to follow the instructions provided for retrieval of the vehicle log card via LTA's One Motoring Website, and instead choosing to log on to his Singpass Application.

d. In light of the above, the District Court held that the applicable presumption was that the Applicant's vehicle log card bore his Fort Gardens address.

25. Since there was a good reason for the Parking By-Law and the Parking By-Law was not onerous, the District Court held that it was not unreasonable.

26. As it turned out, the Applicant's vehicle log card did show his Fort Gardens address. Days after the release of the District Court's decision, the Applicant's solicitors sent the MCST's solicitors a copy of the Applicant's vehicle log card showing his Fort Gardens address, and asking that the MCST issue a car parking label to the Applicant.

Whether the Parking By-Law is Discriminatory

27. The Applicant also argued that the Parking By-Law was invalid because it discriminated against residents whose vehicles are registered to non-Fort Gardens addresses.

28. The District Court found that a differentiating measure on its own does not render a rule invalid, and that a differentiating measure is liable to be repealed only if it negatively impacts "the interest of all subsidiary proprietors in the use and enjoyment of their lots or the common property or the limited common property".

29. The District Court observed that the Applicant did not contend, and could not have contended, that the Parking By-Law had the kind of impact which would render it liable to be repealed. The District Court noted also that the Applicant was not even a victim of the alleged discrimination he complained of.

Abuse of Process

30. In closing, the District Court found that the Applicant had never been interested in the legal merits of his application, was not interested in obtaining a car park label, and that his only interest had been in using the judicial process to vex and oppress the Respondent. The District Court stated that the application was a quintessential abuse of process from start to finish.

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